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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,104	06/30/2005	Juergen Schmenger	3321	4931

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Striker Striker & Stenby
103 East Neck Road
Huntington, NY 11743

EXAMINER	
ELHILO, EISA B	
ART UNIT	PAPER NUMBER
1751	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/541,104	SCHMENGER ET AL.	
	Examiner	Art Unit	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 June 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/30/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-12 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. Claim 12 provides for the use of a dye-containing pellet, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim12 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Double Patenting

3 The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 11/705,626. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application No. 11/705,626, teach and disclose a dye-containing pellet comprising similar dyeing ingredients to those claimed such as natural or synthetic dye-containing starting material as claimed in claims 1-12 (see claims 1-17 of the copending application No. 11/705,626). Therefore, this is an obvious formulation.

Although, the claims of the copending application No. 11/705,626, teach and disclose similar dyeing composition, they are not identical to the instant claims because the claims of the copending application No. 11/705,626, require at least one natural or synthetic dye, while the instant claims may require a combination of at least one natural and synthetic dyes. Therefore, the conflicting claims are not identical.

However, it would have been obvious to one having ordinary skill in the art at the time of the invention to formulate such a dyeing composition by selecting and utilizing only one natural or synthetic dye and, thus a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Satou et al. (US 5,017,195).

Satou et al. (US' 195) teaches a non-dustable granular dye composition comprising direct dyes (see col. 1, lines 62-65), in a binder (carrier) material of hydroxypropylcellulose and a coating agents of polyvinyl pyrrolidone and oligosaccharides (natural film-formers) as claimed in claims 1-7 (see page 2, lines 12-64), wherein the granular dye is dissolved in water to form a dyeing composition as claimed in claims 10-12 (see col. 3, lines 1-2). Satou et al. teaches all the limitations of the instant claims. Hence, Satou et al. anticipates the claims.

Claim Rejections - 35 USC § 103

5 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Satou et al. (US 5017,195) in view of Toumi et al. (US 2004/0166077 A1).

Satou et al. (US' 195) teaches a coated non-dustable granular dye composition comprising any kind of dyes (see col. 1, lines 60-65).

The instant claim differ from the reference by reciting specific species of dyes.

Toumi et al. (US' 077 A1) in another analogous art of fiber dyeing formulation, teaches an encapsulation of a water-soluble cosmetic composition comprising direct dyes and oxidation dye precursors (base and couplers) (see page 5m, Examples 1 and 2 and page 6, paragraph, 0113).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time of the invention, would be motivated to modify the dyeing composition of Satou et al. (US' 195) by incorporating any coupler in the composition including the claimed species to arrive at the claimed invention because Toumi et al. (US' 077 A1) clearly suggests the use of known oxidation couplers in the encapsulated dyeing composition (see page 6, paragraph, 0113), and, thus, a person of the ordinary skill in the art would be motivated to incorporate these couplers as taught by Toumi et al. in the dyeing composition of Satou et al. and would expect such a composition to have similar properties to those claimed, absent unexpected results.

6 Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Satou et al. (US 5017,195) in view of Miczewski et al. (US 2004/0045101 A1).

Satou et al. (US' 195) teaches a coated non-dustable granular dye composition comprising any kind of dyes (see col. 1, lines 60-65).

The instant claim differ from the reference by reciting specific species of dyes.

Miczewski et al. (US' 101 A1) in another analogous art of fiber dyeing formulation, teaches an encapsulation dyeing composition (see page 3, paragraph, 0052), wherein the composition comprising direct dyes such as Basic Brow 17 as claimed in claim 9 (see page 2, paragraph, 0028).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time of the invention, would be motivated to modify the dyeing composition of Satou et al. (US' 195) by incorporating direct dyes as taught by Miczewski et al. to arrive at the claimed invention because Satou et al. teaches an encapsulated dyeing composition comprising direct dyes. Miczewski et al. as a secondary reference, clearly teaches the claimed species of the direct dyes in a capsulated dyeing composition, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed in the absent of contrary.

Conclusion

7 The references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa Elhilo/
Primary Examiner, A.U. 1751

June 14, 2007